

# Ensure your gender is respected and your wishes carried out after your death

## Information for trans people in England and Wales

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Produced by Morgan Potts in collaboration with [The Corpse Project](#) and [Gendered Intelligence](#)

### **Why does this matter?**

Being more informed about how the death industry works in England and Wales, and especially how to deal with the bureaucracy, can empower everyone to have agency and bodily autonomy in death, but this is especially relevant for trans people because we are more likely to die young and our genders are more likely to be disrespected in death. This document outlines what you can do to ensure that your wishes are carried out after you die: write a will, name an executor, and write a letter of wishes.

This information is relevant to people residing in England and Wales, current as of December 2016. If you die whilst in England and Wales, whether or not you are a citizen, the following is applicable.

### **Write a will**

Your will is a legal document that states how your money, possessions, and wealth (your estate) will be allocated when you die, and who is in charge of executing that allocation (your executor). You can, and should, write a will even if you have a modest estate. Writing a will is important because without one, your closest living relative will automatically become your executor and your estate will be allocated based on legal rules of intestacy, which are different for [England](#) and [Wales](#); for example, this would not entitle a friend or partner who is not your spouse or civil partner to any of your estate.

#### **In order for your will to be legal, you must:**

- be at least 18 years old
- make it voluntarily
- be of sound mind
- make it in writing
- sign it in the presence of two witnesses who are over 18 and are not beneficiaries (or married to or in civil partnerships with beneficiaries) in your will
- have it signed by your two witnesses, in your presence

Although your will does not need to be dated to be valid, it is highly advisable to date it. Will-writing firms are not governed by the Law Society, so if using a will-writing service, consider using one that belongs to The Institute of Professional Willwriters which has a code of practice approved by the [Trading Standards Institute Consumer Codes Approval Scheme \(CCAS\)](#). Traders in this scheme display the TSI approved code logo.

You can write your will at any time. Many people choose to write or update their wills at major junctures in their lives, such as having a child, going into surgery, or coming out. If you get married or enter a civil partnership after writing a will, your will becomes null and you must write a new one. If your executor dies before you, you should name a new executor, otherwise your closest living relative will automatically become your executor.

To amend your will you can add a 'codicil', which must be signed and witnessed in the same way as the will; there is no limit to how many codicils you can add. You could also write a new will, stating that any previous wills are void. In this case you should destroy previous wills.

**Your will does not need to be notarised by a solicitor to be legal.** However, unless your will is very straightforward, it is advisable to speak to a solicitor about it.

Every November, [participating solicitors will write a basic will in exchange for a donation to Will Aid](#). The suggested donation is £95 for an individual and £135 for a couple, but these are just suggestions.

Some charities encourage you to make a free will in the hope of a donation, and this is available any time. Try searching for e.g. 'free wills mental health' or 'free wills cancer'.

These are two websites with template wills you can use for free: [here](#) and [here](#).

If you intend to name people in your will who might change their names or gender markers, it's a good idea to note that you wish for them to inherit regardless of whether their present name and gender match the name you used in writing your will. If someone is named in their old name or gender (e.g. "my eldest daughter"), they may have difficulty proving their right to inherit. However, they are likely to win a case with the High Court if they appeal to have the will interpreted in light of the Gender Recognition Act (2004).

## **Name an executor**

The single most important thing you can do to is formally name an executor who you trust to carry out your wishes. If you have made a will, and the coroner does not need to take possession of your body and your body is not a health hazard, then your executor has the immediate right to act as your personal representative and take possession of your body. The executor can delegate this to a family member or someone else if they want, and they have the right to overrule your family members. You can name up to four executors, including friends, family, solicitors, accountants, banks, and—if you don't have anyone you'd trust—[the Public Trustee](#).

When you choose your executors, pick people who will know about your death and who are willing to advocate on your behalf to enact your wishes. Your executors should be people who know your gender identity. Talk to these people before naming them and explain your wishes, and ask them if they're comfortable with this responsibility. Make sure to tell them where your will is.

**Living relatives have rights over your body if you don't name any executors.** If you have not named someone else as your executor, your living relatives are given authority over your body and estate in this order: spouse or civil partner; children; adoptive parents; natural parents; foster parents; siblings; half-siblings; grandparents; and aunts and uncles. The law gives these groups of people priority over common law partnerships or long-term friendships. Your named next of kin will not have the right to deal with your affairs after you have died unless they have the relevant legal or blood relationship to you or you write a will appointing them as an executor.

**Next of kin do not have legal rights.** Your next of kin is anyone you name on medical forms who will be kept informed about your treatment as a patient, but your next of kin do not have legal rights or responsibilities in the event of your death unless they are your living relatives or named as your executors.

In addition to carrying out your will and letter of wishes, your executor will name you and gender you on your death registration form. Once this paperwork is done, anyone who handles your body (such as a funeral director or crematorium) will refer to you by this name and gender, so it is important to get this right. Note that death registration forms include gender ('sex') fields, but death certificates (filled out by coroners) do not.

## Write a letter of wishes

Your letter of wishes is a supplementary, and not legally-binding, document that describes what you would like to happen to your body after you die, and what kind of ceremony (if any) you want. It can also be used to explain any part of your will, give suggestions on how to care for surviving pets, inform your beneficiaries of important documents, and give a personal message to your beneficiaries. It can be as detailed as you like. While there is no legal obligation for your executor to enact your letter of wishes, it will make your desires explicit and hopefully your executor will do their best to respect your wishes. Because it is not a binding legal document, there is no minimum age to writing a letter of wishes and it does not require witness signatures.

**There is no law that says that you must engage an undertaker or have a funeral.** You can be buried on private or public land, or at sea; you could be cremated; or your body can be preserved, though not displayed in public where it might shock public decency. Open-air funeral pyres are currently a grey area but are not unlawful as long as they do not breach environmental regulations. See the [Good Funerals Factsheet](#) for more information.

If your relatives insist on misgendering you or using your birth name instead of your chosen name, or doing a funeral ceremony that is otherwise against your wishes, your executor will have a much better chance at contesting it if you've clearly outlined your desires in a letter of wishes. You can also explicitly state that you are estranged from your family and do not wish for them to have a say in your remains or your funeral service, which will further strengthen your executor's case. You can also say explicitly if there's anyone you don't want in attendance at your funeral.

If your friends or family are unhappy with your funeral and unable to change it, they can hold their own memorial service. This is not ideal but it can be comforting to know that your 'official funeral' does not need to be the only ceremony for you.

**Review your will, letter of wishes, and your choice of executor periodically throughout your life to make sure they remain appropriate.** Wills can be destroyed by unsavory characters; consider distributing copies to your executors and other people you trust, as well as keeping copies yourself. When you travel, it's a good idea to keep your will and letter of wishes with other important documents like your passport.

## **What if no one claims my body, or they can't afford a funeral?**

Your executor and your family are not legally bound to accept responsibility for your body in death. It's best to talk to your executor now and make sure that they are comfortable with the responsibility.

If no one accepts the responsibility of disposing of a dead body, it becomes the responsibility of the state. If you die in hospital and no one accepts responsibility for your body, the hospital must arrange and pay for your funeral. If you die elsewhere and no one accepts responsibility for your body, the local authority (the council) will arrange and pay for a funeral. In either circumstance, your funeral will be simple and anyone who wishes to attend is welcome. If your executor or family cannot afford the cost of a funeral, they may decline responsibility and the council will arrange and pay for a simple service. The council may recover expenses from your estate, if possible.

If they wish, your executor can register your death and ensure that your gender is correctly recorded, and then refuse to accept responsibility for the disposal of your remains. They may be able to [receive help covering funeral costs from the state](#).

Funeral Officers are public servants who generally work in Social Services or Environmental Health. If no one comes forward to claim a body, Funeral Officers go to the person's home and look for clues as to their wishes. They look for a will, a letter of wishes, evidence of any faith a person might hold, and contact information for family and friends. They use this information to find relevant parties and, if no one else steps forward, to plan a simple, appropriate ceremony. Funeral Officers can also act as liaisons if the executor or living relatives are abroad.

## **On national borders**

A dead body can be freely transported within England and Wales without the use of a coffin. If the deceased dies within England and Wales, the coroner must consent to the body being moved out of England or Wales.

If you die abroad, it is the responsibility of your executor or family to arrange the return your body to England and Wales; the considerable cost is often covered in travel insurance policies. It's advisable to have a good travel insurance policy and to carry ID on you whilst abroad.

If you are living in England or Wales and are from somewhere else, and you want your body and estate to be disposed of in England or Wales, you can make this clear in your letter of wishes and name executors who are in England or Wales to carry out your wishes. If your living relatives are abroad and you do not name an executor, your family can rightfully take possession of your body and have it transported to them.

## **Other things you can do**

Trans people often have anxiety about being misgendered or 'deadnamed' (referred to as an old name) in death. You're less likely to be misgendered in death if your friends and relatives know your name, gender, and pronoun, but it's not always possible or desirable to be out to everyone.

Having your name, gender, and pronoun stated in your letter of wishes is a good safeguard against being misgendered and deadnamed. If you're worried about your body being found

in death by someone who does not know your gender, or if your name does not match your identification documents, you could wear something like a medical bracelet which states your name and gender, or keep a piece of paper which states your name and gender in your wallet.

If possible, be registered with your GP under the name and gender you use, because they may be the ones filling out your death registration form. Your GP shouldn't require any paperwork to change your gender marker in the NHS system (though we acknowledge that the NHS currently only uses 'M' and 'F' gender markers), and you could ask them to make a note of your gender and name (if different from your legal name) on your file.

You should consider establishing an enduring power of attorney in the event that you become incapacitated; doing so allows you to choose who will have power over your body and medical treatment if you are unable to make decisions for yourself. Sometimes families act as if loss of capacity triggers a will (it doesn't) and begin distributing or throwing away personal effects. Establishing enduring power of attorney, and writing a letter of priorities, can prevent this and make sure your wishes are respected in life and death.

## Ongoing advocacy work

The Corpse Project and Gendered Intelligence are working together to lobby the Ministry of Justice to change and update their paperwork surrounding death: we have suggested that they remove the requirement to state 'sex' where it is not necessary; and where it is genuinely necessary to record sex or gender (for example if the deceased is donating their body to medical science), to make a distinction between sex and gender, allow for a plurality of genders to be described, and recognise that sex, gender, title, and pronoun may not align in a cisnormative way.

We are also encouraging funeral industry professionals to undergo basic training on gender and trans issues.

## Links to relevant resources

[Citizens Advice: Writing a will](#)

[Good Funeral Guide Factsheet](#)

[Power of Attorney](#)

[Order of priority for grant in case of intestacy](#) (who is entitled to administer over your body and estate after you die if you have not written a will)

[Will Aid](#)

[Get assistance covering funeral costs](#)

[Pros and cons of different options with the body](#)

[Death and bereavement advice](#)

Written by Morgan Potts, in collaboration with Sophie Churchill of The Corpse Project and Simon Croft of Gendered Intelligence. With thanks to Serge Nicholson (ex- Local Authority Funerals Officer) for his valuable input.

This document will be updated regularly. This version is current as of December 2016. The Corpse Project and Gendered Intelligence have made every effort to validate the information here. We encourage everyone to take responsibility for their own knowledge and actions regarding their body and to do further research as necessary.

Follow The Corpse Project ([@corpseproject](#)) and Gendered Intelligence ([@Genderintell](#)) on twitter.